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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 110

WILLARD WILLIAMS, PETITIONER

v.

DR. IVAN W. STEELE, WARDEN, U. S. MEDICAL CENTER, SPRINGFIELD, MISSOURI

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The order of the District Court dismissing the petition for a writ of habeas corpus (R. 5-6) is not reported. The opinion of the Court of Appeals (R. 10-14) is reported at 194 F. 2d 32, and the opinion on the petition for rehearing (R. 26-27) is reported at 194 F. 2d 917.

JURISDICTION

The judgment of the Court of Appeals was entered on February 5, 1952 (R. 15), and a petition for rehearing (R. 15-25) was denied on March 10, 1952 (R. 27). The petition for a writ of certiorari was filed on June 7, 1952. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a prisoner, lawfully in custody under a federal sentence, may, by the writ of habeas corpus, test the legality of his treatment in prison.

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

The Eighth Amendment to the United States Constitution:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

28 U.S.C. 2243, Act of June 25, 1948, ch. 646, 62 Stat. 965:

> A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.
>
> * * * * *
>
> The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.

18 U. S. C. 4042, Act of June 25, 1948, ch. 645, § 1, 62 Stat. 849:

Duties of Bureau of Prisons

The Bureau of Prisons, under the direction of the Attorney General, shall—

(1) have charge of the management and regulation of all Federal penal and correctional institutions;

(2) provide suitable quarters and provide for the safekeeping, care, and subsistence of all persons charged with or convicted of offenses against the United States, or held as witnesses or otherwise;

(3) provide for the protection, instruction, and discipline of all persons charged with or convicted of offenses against the United States.

This section shall not apply to military or naval penal or correctional institutions or the persons confined therein.

STATEMENT

In a habeas corpus petition filed on May 19, 1951, in the United States District Court for the Western District of Missouri, petitioner alleged that, after having been found guilty of a federal crime and incarcerated under a life sentence in the United States penitentiary at McNeil Island, Washington, he was on June 1, 1949, transferred to the United States Medical Center at Springfield, Missouri, because of his ill health (R. 1-2); that on February 26, 1950, he was "taken to isolation for a period

of seventeen days' confinement;" that on March 8 he experienced the "first series of excruciatings;"[1] that from March 16 to June 2, 1950, he was confined in a barren cell and suffered a severe burn on his left arm due to "excruciatings" by persons whose true names were unknown; that he was confined in a barren cell from June 11 to June 19, and from August 23 to October 18, 1950; that during the periods of confinement the "excruciatings" became so unbearable that petitioner "voiced his grievance to the officials on numerous occasions, without consequence" (R. 3).

Petitioner further alleged that under 28 U.S.C. 2243 (*supra*, p. 2) the judge is "not limited to a simple remand or discharge of the prisoner, but he may remand with directions that the prisoner's retained civil rights be respected, or the court may order the prisoner placed in the custody of the Attorney General of the United States for transfer to some other institution" (R. 4). In concluding his pleading, petitioner prayed that he "be restored to his rightful protection, as law and justice requires and demands" (R. 5).

The district judge, without a hearing and without an opposition pleading from respondent, entered an order dismissing the petition for a writ of habeas corpus, on the ground that, since the petition indicated that petitioner was lawfully in custody, the court had no jurisdiction to interfere.

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[1] These may possibly refer to shock treatments which the prison doctors considered necessary for the improvement of petitioner's condition as a mental patient.

In his order the judge stated that "[t]he petitioner is deprived of no rights by the prison authorities in the exercising and enforcing of regulations and regimentation and discipline. If a prisoner should be mistreated by prison authorities, the Department of Justice has the power to correct any abuses that may occur in the executive branch of the government under which the respondent operates; or any person wrongfully inflicting injuries upon the person of petitioner while a prisoner may be prosecuted, as stated in the Logan case [*Logan* v. *United States,* 144 U.S. 263]" (R. 5).

On appeal (R. 6), the Court of Appeals unanimously affirmed the judgment (R. 15).

ARGUMENT

The decision of the court below is supported by the great weight of authority and should not be disturbed.

The traditional function of the writ of habeas corpus is to inquire into the legality of detention. Authorized judicial relief is confined to the discharge of the prisoner or his admission to bail. *Eagles* v. *Samuels,* 329 U.S. 304, 315; *McNally* v. *Hill,* 293 U.S. 131, 136; *In re Boardman,* 169 U.S. 39, 43. No decisions of this Court have expanded the scope of the writ of habeas corpus to include jurisdiction on the facts alleged by petitioner in the instant case.

Under 18 U.S.C. 4042 (*supra,* p. 3) Congress has expressly entrusted to the Bureau of Prisons, under the direction of the Attorney General, the

"management and regulation of all Federal penal and correctional institutions," and the duty to provide for the "safekeeping, care, and subsistence" and the "protection, instruction, and discipline" of federal prisoners. The weight of federal authority has recognized for many years the clearly expressed intention of Congress to impose upon the Bureau of Prisons, rather than upon the federal district courts, the duty of supervising the treatment and discipline of federal prisoners. Numerous decisions have held that, while the federal courts undoubtedly have power on habeas corpus to deliver from prison those illegally detained, they do not have power to supervise the treatment or discipline of those legally in custody in federal institutions. *Sarshik* v. *Sanford,* 142 F. 2d 676 (C.A. 5); *Platek* v. *Aderhold,* 73 F. 2d 173, 175 (C.A. 5); *Stroud* v. *Swope,* 187 F. 2d 850, 851-852 (C.A. 9), certiorari denied, 342 U.S. 829; *Taylor* v. *United States,* 179 F. 2d 640, 643 (C.A. 9); *Numer* v. *Miller,* 165 F. 2d 986 (C.A. 9); *Snow* v. *Roche,* 143 F. 2d 718, 720 (C.A. 9), certiorari denied, 323 U.S. 788; *Sturm* v. *McGrath,* 177 F. 2d 472, 473 (C.A. 10); *Dayton* v. *Hunter,* 176 F. 2d 108, 109 (C.A. 10), certiorari denied, 338 U.S. 888; *Powell* v. *Hunter,* 172 F. 2d 330, 331 (C.A. 10); *Shepherd* v. *Hunter,* 163 F. 2d 872, 874 (C.A. 10). It has been pointed out that testing the question of alleged mistreatment by a petition for a writ of habeas corpus would "open the door to a flood of applications from federal prisoners which would seriously

hamper the administration of our prison system." Cf. *Stroud* v. *Swope, supra,* 187 F. 2d at 852.

The alleged conflict claimed by petitioner (Pet. 5-7) does not really exist. *Johnson* v. *Dye,* 175 F. 2d 250 (C.A. 3), reversed, 338 U.S. 864, does not involve the issue here presented. There the Third Circuit held that a person detained in Pennsylvania for extradition to the State of Georgia should be released from custody where the undisputed evidence was to the effect that, when previously incarcerated in Georgia, he had been subjected to cruel and inhuman punishment.[2] The relief there sought was traditional habeas corpus relief—release from custody. The case did not present the issue of whether one rightfully in custody could by habeas corpus test the legality of his treatment while in custody.

Coffin v. *Reichard,* 143 F. 2d 443, 444 (C.A. 6) is a contrary holding on the specific issue here involved, but the vitality of that decision has been dissipated by the later Sixth Circuit case of *Kemmerer* v. *Benson,* 165 F. 2d 702, 703, certiorari denied, 334 U.S. 849, which does not even mention it, and expressly follows the majority rule stated in *Platek* v. *Aderhold,* 73 F. 2d 173 (C.A. 5), *supra,* p. 6), that the question of improper treatment of a

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[2] The reversal by this Court was apparently predicated on the ground that it was necessary to exhaust state remedies before applying for relief in the federal courts. 338 U.S. 864. See *U. S. ex rel. Jackson* v. *Ruthazer,* 181 F. 2d 588 (C.A. 2); *Johnson* v. *Matthews,* 182 F. 2d 677, 682 n., 685 n. (C.A.D.C.), certiorari denied, 340 U.S. 828.

prisoner is not an appropriate subject authorizing his discharge under an application for a writ of habeas corpus. Thus there is no authoritative decision in conflict with the decision below.

There is no substance in petitioner's contention that the effect of the decision of the court below is to hold that a mistreated federal prisoner has no judicial remedy to test the illegality of mistreatment (Pet. 16). The only question involved was whether habeas corpus was a proper vehicle for petitioner to test his claim that he was being subjected to cruel and unusual punishment in violation of the Eighth Amendment. What other remedies might be available or the degree of their effectiveness were not germane. It will be time enough to rule upon these questions when they may be raised by petitioner in appropriate judicial proceedings.[3] The court below clarified the above situation in its opinion on the petition for a rehearing by unequivocally stating that the sole, narrow scope of its holding was that the application of

[3] Suggested remedies for petitioner, assuming that he is able to prove mistreatment, are (1) Injunction against the warden for "abuse of lawful duty or wrongful usurpation of power." Cf. *Laughlin* v. *Cummings*, 105 F. 2d 71, 73 (C.A. D.C.). (2) Prosecution under 18 U.S.C. 241 and 242 for civil rights violations. Cf. *Logan* v. *United States*, 144 U.S. 263; (R. 5). (3) Addressing uncensored communications of complaint to the Director of Bureau of Prisons and to members of Congress. See Federal Prisons—1946, p. 17: "The use of the prisoners' mail box, the procedure through which inmates may write letters, uncensored in institutions, to the Director of the Bureau and to certain other public officials [including Congressmen], reached a new high level." See also *Lowe* v. *Hiatt*, 77 F. Supp. 303, 305 (M.D. Pa.). (4) Civil action for damages. Cf. *Gordon* v. *Garrson*, 77 F. Supp. 477, 479-480 (E.D. Ill.); 72 C.J.S. § 13, pp. 865-866.

habeas corpus could not be "extended to embrace the correction of alleged unconstitutional mistreatment by prison authorities subsequent to valid judgment and commitment" (R. 26-27).

CONCLUSION

The clear weight of federal authority is in accordance with the holding of the court below and there is no authoritative decision to the contrary. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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JULY, 1952.

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